

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.413 OF 2005

Vital Health Care Pvt. Ltd. .. Appellant.
Versus
Nashik Municipal Corporation .. Respondent.

Mr.M.M.Sathaye for the appellant.

**CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.**

DATE : MARCH 7, 2005.

P.C.

1. Heard Mr.Sathaye, learned counsel for the appellant.

2. The notice issued by the respondent-Corporation dated 3.2.2001 was challenged in Special Civil Suit No.62 of 2001. The notice was in respect of octroi amounting to Rs.1,44,092/- for the goods brought within limits of Nashik Municipal Corporation. The notice also contended demand for compounding fee amounting to Rs.14,40,920/-. The learned counsel submitted that in so far as imposing of octroi is concerned, separate application under Bombay Provincial Municipal Corporation Act is pending. This is suit in respect of compounding fee which was ten times of the octroi amount. The trial Court has declared

that the notice dated 3.2.2001 demanding compounding fee is illegal and it has clarified that the notice will be still valid to the demand of octroi amount. The rest of the prayers in the suit are dismissed. The learned counsel specifically submitted that the clarification given by the trial Court to the extent that the notice would be still valid to the demand of octroi amount is not under challenge in this appeal. He states that equally declaration in respect of notice dated 3.2.2001 demanding compounding fee is also not under challenge though the declaration is in favour of the appellant. However, he submitted that he is challenging the order wherein it is stated that rest of the prayers of special civil suit no.62 of 2001 stands dismissed. We asked learned counsel as to what are the prayers which are rejected. The learned counsel for the appellant submitted that the prayer in respect of injunction to recover the amount of compounding fee is not granted by the court and, therefore, they are approaching this Court. Except this, no other point was argued. We are surprised to find the approach of the appellant. When it is declared by the Court that the notice to that extent is illegal no sensible corporation will proceed to implement the said notice and filing of such appeal was absolutely not necessary. When we

showed inclination to dismiss the appeal the learned counsel for the appellant submitted that the first appeal cannot be dismissed in such way without calling for record and proceedings. What we find is that the decree is in favour of the appellant, as a result of which the respondent cannot proceed against the appellant since the notice is declared illegal to the extent of demand of compounding fee. It was brought to our notice that during the pendency of the suit the corporation has confiscated the property of the appellant. However, by the interim order the trial Court has vacated the said confiscation and directed the corporation to return the property and accordingly, the corporation has acted and returned the property. He further states that the corporation will come again and confiscate the property. We are unable to understand that when the notice is declared illegal the corporation cannot proceed to confiscate the property. There was no cause for the appellant to file the appeal. It is not adverse decree to the appellant which can be challenged in the appeal. It is only an attempt on the part of the appellant to protract the matter by not paying octroi to the municipal corporation. The appeal stands rejected.

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(D.B.BHOSALE, J.)

(S.B.MHASE, J.)

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